IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE FIRST DAY OF OCTOBER
TWO THOUSAND AND FOUR

-

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO : 6811 of 2004

-

Between:

Kolanu Yadaiah, S/o Gopaiah,
R/o Bandlaraviryal Village, Hayathnagar Mandal,
Ranga Reddy District.

..... PETITIONER

AND

-

1 The Government of A.P. R & B Department,

A.P. Secretariat, Hyderabad. rep.by its Secretary,
2 The District Collector, Ranga Reddy District.
3 The Mandal Revenue Officer, Hayathnagar mandal,

Ranga Reddy District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, Order or direction more particularly one in the nature of a Writ of Mandamus declaring the action of the respondents in high handedly occupying of Ac.1.20 cents of land and laying the road across the land of the petitioner situated in Sy.No.199 Bandavavirala Village of Hayathnagar Mandal, Ranga Reddy District without initiating launching any land Acquisition proceedings or giving any alternative land or without giving any compensation is highly arbitrary, improper, violative of fundamental right and opposed to principles of natural justice and consequently to direct the respondents either to give any equal extent of land of equal value, or to pay compensation as per the market value prevailing during the 1997-98.

Counsel for the Petitioner: MRS.N.SARASWATHI

Counsel for Respondents: GP FOR ROADS & BUILDINGS

The Court made the following:

ORDER:

The petitioner claims to be the owner of land admeasuring Acs.2.21 in S.No.199 in Bandlaraviryal Village, Hayatnagar Mandal, Ranga Reddy District. According to the

petitioner, the land was abutting the Zilla Parishad Road and during 1997-98 Roads and Buildings Department while laying down the road occupied his land admeasuring Acs.1.20 in spite of the protest made by him, without initiating any proceedings under the Land Acquisition Act and without paying any compensation. The petitioner allegedly made a number of representations and also met the Hon'ble Chief Minister and Revenue Minister, in vain. Therefore, the petitioner invoked the jurisdiction of this Court praying for a Writ of Mandamus declaring the action of the respondents in occupying the land admeasuring Acs.1.20 as arbitrary and illegal and for a consequential direction to the respondents to allot alternate land or pay compensation as per the market value prevailing during 1997-98.

This Court while admitting the writ petition on 8-4-2004 passed interim order in WPMP No.8791 of 2004, which reads as under.

The case of the petitioner is that an extent of Acs.1.20 guntas in Sy.No.199 of Bandlaraviryal village of Ranga Reddy District was occupied by the respondents for laying the road, without acquiring the same. Even though the petitioner approached, and the respondents promised that the petitioner will be provided an alternative land or be paid compensation, but so far the respondents did not take any steps either to pay compensation or for providing an alternate land.

Though the matter is called in the morning, none appeared on behalf of the respondents. Therefore the matter is passed over and taken up at 2.15. Even in the afternoon also, none appeared for the respondents.

Under the above circumstances, the respondents are directed either to provide alternative land or to pay compensation as provided under the Land Acquisition Act, within a period of eight weeks from the date of receipt of this order.

Respondents 1 to 3 have now moved WVMP No.2828 of 2004. The submissions for the purpose of interlocutory applications and main writ petition being the same, the writ petition itself was heard on 30-9-2004 and today as well with the consent of the learned counsel for the petitioner and learned Government Pleader for Land Acquisition and is being disposed of by this order.

The Executive Engineer, Roads and Buildings Division, Hyderabad filed counter affidavit on behalf of the first respondent stating that there was an existing road from Ghatkesar to Anajpur under the control of Panchayat Raj Department passing through Bandlaraviryal village. As per the orders of the Government in G.O.Ms.No.165 T(R&B) R IV.I Department dated 17-8-1996, the road was taken over from Panchayat Raj Department on 18-11-1996 and R & B Department has neither formed nor widened the same. At the time of taking over the road, it was W.B.M. road and the same was developed into a black top road without taking any piece of land on either side of the road. The first respondent denied the allegation made by the petitioner that an extent of Acs.1.20 in Sy.No.199 was forcibly taken for laying the road. It is also stated that as it is an existing road, which was developed into a black top road, the question of acquiring the land does not arise and therefore, there is no necessity to pay any compensation. As per the pahani entries for the year 1994-95 and 1995-96 submitted by the Mandal Revenue Officer, Hayatnagar Mandal, an

extent of Acs.0.36 is shown to be owned by the petitioner and another extent of Acs.0.36 belongs to Sri K. Narayana. Therefore, it is amply clear that R & B Department has not taken any land of the petitioner.

The District Collector, Ranga Reddy District has also filed counter affidavit stating that as per the record there was an existing Kachha road from Ghatkesar to Anajpur village, which was taken up by the Panchayat Raj Department for maintenance. The same was subsequently taken over by the R & B Department, which was developed into black top road without acquiring any land. The road was formed 30 years ago and there is no provision for paying compensation when existing road is developed into a black top road.

The learned counsel for the petitioner Smt. N. Saraswati submits that in 1997, the respondents forcibly occupied the land of the petitioner admeasuring Acs.1.20 without paying any compensation and, therefore, the petitioner is entitled to seek allotment of alternative land or adequate compensation as per market value prevailing in 1997-98. She placed strong reliance on two communications sent by third respondent to second respondent on 6-12-1998 and 19-8-2000 (produced at the time of arguments). She also submits that the delay on the part of the petitioner in approaching this Court is not vital as the valuable right of the petitioner is defeated by the arbitrary action of the respondents.

Per contra, the learned Government Pleader for Transport, R & B Department, Sri R. Satyanarayana Raju submits that the road has been in existence for the last 30 years, which was handed over to R & B Department in 1996. R & B Department only developed the road by taking up black toping and at no point of time the petitioner's land was occupied for the purpose of road. He also submits that the two communications relied on by the learned counsel for the petitioner do not lend any support to the case of the petitioner and that the writ petition is bared by delay and latches.

The admitted facts in this case are that there is a road abutting the land in Sy.No.199 allegedly belonging to the petitioner and that, the road which was maintained by Panchayat Raj Department was transferred to R & B Department by reason of the orders of the Government in G.O.Ms.No.165 dated 17-8-1996 and that R & B Department developed the road by black toping the same. It is also not denied that after the road was taken over by R & B Department it was not widened. The petitioner has not filed any reply affidavit denying the averments made in the counter affidavit of the first respondent as well as the District Collector. Therefore, these facts are deemed to be admitted. Be that as it is, if the petitioner's land was allegedly occupied in the year 1997, nothing prevented the petitioner to seek redressal before the appropriate authority. Though, across the bar a submission is made that the petitioner has been moving from pillar to post, no material is placed before this Court to that effect. The two communications relied on by the learned counsel for the petitioner do not lend any support to the case of the petitioner. In the letter bearing Lr.No.C/6220/98 dated 6-12-1998 addressed to the second respondent, the Mandal Revenue Officer states that 20 years back (i.e., in 1978) Zilla Parishad Road has been laid and Kolan Yadaiah fenced his land as per the compromise with the

villagers. In another letter bearing L.R.No.C/1096/2000 dated 19-8-2000 the Mandal Revenue Officer informed the District Collector that about 25 years ago road was laid over an extent of Acs.1.20 in Sy.No.198-199. This does not reveal that the said land belongs to the petitioner. Therefore, a reasonable inference can be drawn that no part of the petitioner's land was acquired or used for laying down the road.

The petitioner filed the writ petition in April 2004 claiming for alternative land or compensation. It is well settled in ***Koppula Narasaiah v. Government of Andhra Pradesh*** *and* ***Northern Indian Glass Industries v. Jaswant Singh*** that when even where land is acquired as per the provisions of Land Acquisition Act, 1894, the landowner is not entitled for allotment of alternative land. Therefore such a relief cannot be granted.

Whether this Court can issue a Mandamus after a long lapse of time to pay compensation, when there is delay on the part of the person, who is allegedly the owner of the land, in approaching the Court for compensation, the presumption would be that no part of land of such person is acquired. A reference may be made to ***State of Maharashtra v. Digambar***[3] and ***Municipal Council, Ahmednagar v. Shah Hyder Baig***[4]**.**

In ***State of Maharashtra v. Digambar*** (3 supra) it was held,

In our view, the above allegation is in no way sufficient to hold that the writ petitioner (respondent here) has explained properly and satisfactorily the undue delay of 20 years, which had occurred between the alleged taking of possession of his land and the date of filing of writ petition in the High Court. We cannot overlook the fact that it is easy to make such kind of allegations against anybody that too against the State. When such general allegation is made against a State in relation to an event said to have occurred 20 years earlier, and the State's non-compliance with petitioners demands, State may not at all be in a position to dispute such allegation, having regard to the manner in which it is required to carry on its governmental functions. Undue delay of 20 years on the part of the writ petitioner, in invoking the High Court's extraordinary jurisdiction under Article 226 of the Constitution for grant of compensation to his land alleged to have been taken by the Governmental agencies, would suggest that his land was not taken at all, or if it had been taken it could not have been taken without his consent or if it was taken against his consent he had acquiesced in such taking and waived his right to take compensation for it.

In ***Municipal Council, Ahmednagar v. Shah Hyder Baig,*** (4 supra) the Supreme Court considered the effect of delay in exercise of jurisdiction under Article 226, and held,

… It is now a well settled principle of law and we need not dilate on this score to the effect that while no period of limitation is fixed but in the normal course of events, the period, the party is required for filing a civil proceeding ought to be the guiding factor. While it is true that this extraordinary jurisdiction is available to mitigate the sufferings of the people in general but it is not out of place to mention that this extraordinary jurisdiction has been conferred on to the law Courts under Artit.226 of the Constitution on a very sound equitable principle. Hence, the equitable doctrine, namely, 'delay defects equity' has its fullest application in the matter of grant of relief under Article 226 of the Constitution. The

discretionary relief can be had provided one has not by his act or conduct given a go-bye to his rights. Equity favours a vigilant rather than an indolent litigant and this being the basic tenet of law, the question of grant of an order as has been passed in the matter as regards restoration of possession upon cancellation of the notification does not and cannot arise.

The Writ Petition, for the above reasons, is devoid of merit and is accordingly dismissed. No costs.

_____

V.V.S. RAO, J.

1st October, 2004

Js

To

1 The Government of A.P. R & B Department,

A.P. Secretariat, Hyderabad. rep.by its Secretary,
2 The District Collector, Ranga Reddy District.
3 The Mandal Revenue Officer, Hayathnagar mandal,

Ranga Reddy District.

4 2 CCs to G.P. for Roads & Buildings, High Court Buildings,

Hyderabad. (OUT)

5 2 CD copies.